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SUBJ: AMNESTY INTERNATIONAL/ICJ REPORT ON POLITICAL PRISONERS IN URUGUAY

REF: MONTEVIDEO 1683

FOLLOWING ARE EXCERPTS FROM REPORT REQUESTED REFTEL. FULL TEXT HAS BEEN AIR POUCHED.

QTE REPORT OF MISSION TO URUGUAY, IN APRIL/MAY 1974, BY MR. NIALL MACDERMOT, SECRETARY-GENERAL, INTERNATIONAL COMMISSION OF JURISTS AND MISS INGER FAHLANDER, RESEARCH OFFICER OF AMNESTY INTERNATIONAL. (1) WE WERE IN MONTEVIDEO FROM MONDAY 29 APRIL TO SATURDAY 4 MAY. . . . . (ACCOUNT OF VARIOUS OFFICIAL VISITS). IT HAD BEEN AGREED THAT OUR MEETINGS WITH MINISTERS WOULD BE ON A CONFIDENTIAL BASIS. IN ADDITION TO THE OFFICIAL MEETINGS, WE MET MANY LAWYERS HAVING PRACTICAL EXPERIENCE IN RELATION TO POLITICAL PRISONERS. WE FOUND THE INFORMATION SUPPLED BY THEM WAS IN SOME RESPECTS AT VARIANCE WITH THAT GIVEN BY THE AUTHORITIES. WE WERE ALSO ABLE TO VISIT A PRISON (LIBERTAD) WHERE POLITICAL SUSPECTS SUBJECT TO TRIAL ARE
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BEING HELD, BUT WE WERE REFUSED PERMISSION TO VISIT ANY OF

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THE MILITARY BARACKS WHERE INTERROGATIONS ARE CARRIED OUT.

LEGAL BASIS FOR THE ARREST AND DETENTION OF POLITICAL PRISONERS

(2) IN ORDER TO COMBAT THE SUBVERSIVE ACTIVITIES OF THE TUPAMAROS A STATE OF INTERNAL WAR WAS DECLARED BY THE PRESIDENT AND APPROVED BY THE PARLIAMENT IN 1971 UNDER SECTION 168 (17) OF THE URUGUAYAN CONSTITUTION. IN JULY, 1972, THE STATE OF WAR WAS LIFTED WHEN PARLIAMENT PASSED LAW NO. 14.068, THE LAW OF NATIONAL SECURITY. THIS LAW CREATED A NUMBER OF NEW OFFENCES AGAINST THE SECURITY OF THE STATE, WHICH WERE DECLARED TO BE MILITARY OFFENCES AND ACCORDINGLY SUBJECT TO MILITARY JUSTICE. THE CONSTITUTIONALITY OF THIS LAW WAS CALLED IN QUESTION BY A NUMBER OF DISTINGUISHED CONSTITUTIONAL AND PENAL LAWYERS, BUT ON APRIL 5, 1974, THE SUPREME COURT OF JUSTICE, BY A MAJORITY OF THREE TO TWO, UPHELD THE VALIDITY OF THE LAW.

(3) THERE ARE, THEREFORE, NOW TWO PROCEDURES BY WHICH POLITICAL SUSPECTS MAY LAWFULLY BE HELD IN CUSTODY:

(A) PERSONS WHO ARE SUSPECTED OF HAVING COMMITTED OFFENCES UNDER THE LAW OF NATIONAL SEUCIRTY MAY BE ARRESTED AND HELD BY THE ARMED FORCES AND SUBJECTED TO LEGAL PROCESS UNDER THE SYSTEM OF MILITARY JUSTICE. BY A DECREE DATED JUNE 12, 1973, THEY MUST BE PLACED AT THE DISPOSAL OF THE COMPETENT JUDGE (I.E. JUDGE OF INSTRUCTION) OR RELEASED WITHIN TEN DAYS OF THE ARREST.

(B) PERSONS WHO ARE NOT SUSPECTED OF HAVING COMMITTED AN OFFENCE, BUT WHOSE DETENTION IS CONSIDERED NECESSARY ON SECURITY GROUNDS, MAY BE DETAINED UNDER EMERGENCY MEASURES AUTHORIZED BY ARTICLE 168, PARA 17, OF THE CONSTITUTION. THIS POWER IS SUBJECT TO A CONTROL BY THE LEGISLATIVE AND NOT THE JUDICIAL POWER. . . . PERSONS DETAINED IN THIS WAY ARE HELD IN POLICE STATIONS, OR IN MILITARY BARRACKS OR IN A SPECIAL CAMP IN A FOOTBALL STADIUM IN MONTEVIDEO KNOWN AS "THE CYLINDER".

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(4) . . . THE SUSPENSION ON 27 JUNE, 1973, OF THE ELECTED GENERAL ASSEMBLY (COMPRISING THE SENATE AND CHAMBER OF REPRESENTATIVES), AND THE SUBSEQUENT TRANSFER OF ITS POWERS TO A NOMINATED COUNCIL OF STATE, IS DEVOID OF ANY AUTHORITY UNDER THE CONSTITUTION. BY THIS MEANS THE BASIC PRINCIPLES OF THE CONSTITUTION, WHICH REST UPON A CAREFULLY BALANCED SEPARATION OF THE LEGISLATIVE, EXECUTIVE AND JUDICIAL POWERS, HAVE BEEN OVERTHROWN. THE

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LEGISLATIVE POWER IS NOW SUBORDINATED TO THE EXECUTIVE POWER, AND THE INDEPENDENCE OF THE JUDICIARY HAS BEEN

AFFECTED BY THE EXTENSION OF MILITARY JUSTICE TO OFFENCES COMMITTED BY CIVILIANS. THE PRESIDENT OF THE SUPREME COURT EXPLAINED TO US THAT, APART FROM THE LIMITED RIGHTS OF REVIEW ON APPEAL, HE HAD NO JURISDICTION OR CONTROL OVER THE MILITARY COURTS.

ABSENCE OF NOTIFICATION OR WRITTEN AUTHORITY FOR ARRESTS

(5) . . .

(6) . . . IN PRACTICE, ARRESTED PERSONS DO NOT KNOW UNDER WHAT AUTHORITY THEY ARE HELD. NEITHER THEY, NOR THEIR FAMILIES, NOR THEIR LAWYERS ARE TOLD WHY OR ON WHAT AUTHORITY THEY HAVE BEEN ARRESTED, AND THE NAMES OF ARRESTED PERSONS ARE NOT PUBLISHED, EXCEPT WHERE THERE IS AN EVENTUAL NOTIFICATION TO THE COUNCIL OF STATE. NO DOCUMENT IS EVER ISSUED AUTHORIZING AN ARREST. IT IS USUALLY ONLY BY PURSUING ENERGETIC ENQUIRIES OF THE CIVIL AND MILITARY AUTHORITIES THAT FAMILIES AND LAWYERS ARE ABLE TO FIND OUT WHERE ARRESTED PERSONS ARE DETAINED, AND BY WHOM AND FOR WHAT REASON. IF A PERSON IS TAKEN TO THE CYLINDER, IT IS KNOWN THAT HE IS HELD UNDER THE EMERGENCY SECURITY MEASURES. BUT IF HE IS IN EITHER POLICE OR MILITARY CUSTODY, HE MAY IN DUE COURSE BE SUBJECTED EITHER TO PROCESS UNDER MILITARY JUSTICE OR TO DETENTION UNDER THE EMERGENCY MEASURES OR SIMPLY BE RELEASED WITHOUT ANY AUTHORITY FOR HIS DETENTION BEING SPECIFIED. HABEAS CORPUS HAS PROVED QUITE INEFFECTIVE AS A REMEDY TO DETERMINE THE PLACE OR GROUNDS OF DETENTION. THE AUTHOR-ITIES USUALLY SIMPLY NEGLECT TO MAKE ANY ANSWER TO THE UNCLASSIFIED

ENQUIRIES OF THE JUDGE.

TORTURE AND ILL-TREATMENT

(7) THE LAXITY OF THESE PROCEDURES IS SERIOUS FROM THE POINT OF VIEW OF LEGAL PROTECTIONS AGAINST ILL-TREATMENT OF SUSPECTS. WE RECEIVED MANY COMPLAINTS OF TORTURE AND OTHER ILL-TREATMENT. THE GENERAL VIEW AMONG DEFENCE LAWYERS IS THAT ALMOST ALL PERSONS DETAINED IN MILITARY BARACKS AND SOME OF THOSE DETAINED IN POLICE STATIONS ARE STILL BEING SEVERELY ILL-TREATED EITHER DURING OR AS A PRELIMINARY TO INTERROGATIONS. THE MOST CONSERVATIVE ESTIMATE WE RECEIVED WAS THAT IT OCCURRED IN ABOUT 50 OF CASES.

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(8) THE AUTHORITIES TOLD US THAT VERY STRICT INSTRUCTIONS HAD BEEN ISSUED TO ALL UNITS FORBIDDING ANY FORM OF ILL-TREATMENT AND THAT THESE INSTRUCTIONS HAD, IN GENERAL,

BEEN CARRIED OUT. . . . UNQTE

(A DETAILED ACCOUNT OF THE MILITARY JUSTICE PROCEDURE (INVESTIGATION, PRE-SUMARIO, SUMARIO, THE TRIAL (PLENARIO), THE SECOND INSTANCE BEFORE THE SUPREME MILITARY TRIBUNAL) IS FOLLOWED BY AN ANALYSIS OF WHAT THE PROCEDURE HAS PRODUCED. SINCE JULY 1972 SOME 3500-4000 PEOPLE HAVE BEEN DEFENDENTS UNDER THE SYSTEM; 32 TRIED AND SENTENCE& FINALLY DETERMINED; 200 MORE OR LESS RELEASED; REMAINDER BEING PROCESSED, OF WHOM MANY ARE ON CONDITIONAL RELEASE. THE REPORT CONCLUDES THAT SINCE THE TUPAMARO MOVEMENT IS SUBSTANTIALLY OVERCOME, URUGUAY IS TO BE HOPED SOON TO RETURN TO FULLY CIVILIAN JUSTICE. UNTIL THIS HAPPENS, VARIOUS RECOMMENDATIONS ARE MADE FOR MILITARY JUSTICE, INCLUDING A CENTRAL BUREAU OF INFORMATION (ARRESTEES), PRIOR WRITTEN AUTHORITY FOR ALL ARRESTS, TRIAL JUDGES SHOULD TAKE OVER CASE VERY QUICKLY (WITHIN TEN DAYS AT MOST), PROVISION SHOULD BE MADE FOR NOTICE TO COUNCIL OF STATE, PROMPT CHARGES TO DEFENDENT AND RESPONSIVENESS OF COUNCIL TO CONCERNS OF FAMILIES AND LAWYERS.) KISSINGER

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